

ESTTA Tracking number: **ESTTA283054**

Filing date: **05/11/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179480
Party	Defendant Kobelco Construction Machinery Co., Ltd.
Correspondence Address	Bassam Ibrahim Buchanan Ingersoll & Rooney PC 1737 King Street, Suite 500 Alexandria, VA 22314-2727 UNITED STATES bassam.ibrahim@bipc.com
Submission	Opposition/Response to Motion
Filer's Name	S. Lloyd Smith
Filer's e-mail	lloyd.smith@bipc.com
Signature	/SLS/
Date	05/11/2009
Attachments	91179480 1033715-025.pdf (28 pages)(2785593 bytes)

PLASTI-FAB LTD.,	:	
	:	
Opposer,	:	
	:	Opposition No. 91179480
v.	:	
	:	Opposition No. 91179482
KOBELCO CONSTRUCTION MACHINERY	:	
CO., LTD.,	:	
	:	
Applicant.	:	

Applicant Kobelco Construction Machinery Co., Ltd. ("Applicant") hereby opposes Opposer Plasti-Fab Ltd.'s ("Opposer") April 20, 2009 Motion for Default Judgment, and, In The Alternative, For Permission to File Motion for Summary Judgment Outside of the Discovery Period ("Opposer's Motion"), for the reasons stated below.

As stated in Opposer's Motion, Applicant did serve objections and responses on April 8, 2009. There is no dispute that in doing so Applicant complied with the deadline in the Board's March 9, 2009 Order. The substance of Opposer's argument appears to be that Opposer is dissatisfied with the Applicant's responses. In advancing its arguments, Opposer has misrepresented the record by asserting that "Applicant failed to provide substantive responses to *any* of the discovery requests." Opposer's

Motion at 2. Opposer's statement is untrue. First, Applicant has admitted or denied all of Opposer's Requests for Admissions in compliance with Federal Rule 36. *See* Opposer's Motion Ex. C. Second, Applicant has provided substantive responses to some interrogatories and objected to disclosure of confidential information prior to entry of a protective order for many interrogatories and document requests. *See* Opposer's Motion Exs. A and B. Even after a protective order is entered, Applicants will have little discovery to provide Opposer because Applicant has applied for U.S. Application Serial Nos. 79/023,934 and 79/023,935 on the basis of Section (a) and has no current sales in the United States other than a shipment of five (5) used machines which have not been sold. Applicant has served supplemental interrogatory responses concurrently with this opposition brief in order to make these facts clear. Ex. 1. Applicant has further produced documents pertaining to the shipment of five (5) machines into the United States. Ex. 2.


In sum, there is no basis for the Default Judgment Opposer seeks.

II. Argument

"Default judgment is a harsh remedy" (TBMP, § 527.01) which is not an appropriate remedy in this instance. As established above, Applicant has not disregarded a Board Order and is not refusing to provide discovery. Even to the extent the Board disagrees with Applicant's objections, other remedies are available. TBMP, § 527.01. As the Board has previously stated, "While we strongly disapprove of defendant's improper assertion of objections, entry of judgment is inappropriate." *Electronic Indus. Assoc. v. Potega*, 50 USPQ2d 1775, 1778 (TTAB 1999). This matter should be resolved on the merits, not on default.

Opposer's request for permission to move for summary judgment is just an alternate attempt to avoid resolving this case on the merits. The Board has not ordered that Opposer's requests for admissions stand admitted. Applicant has responded to the Requests for Admissions by the deadline set in the Board's March 9, 2009 Order. To the extent necessary, Opposer moves the Board to accept these responses because presentation of the merits will be subserved thereby. Fed. R. Civ. P. 36(b); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1721 (TTAB 1989) (granting motion to be relieved of admission where merits will be subserved thereby). Further, Opposer has not established, or even alleged, any insufficiency in Applicant's responses. Thus, Opposer's Requests for Admissions should not be deemed admitted and Opposer's Motion to move for summary judgment should be denied.

Respectfully submitted,
KOBELCO CONSTRUCTION
MACHINERY LTD.

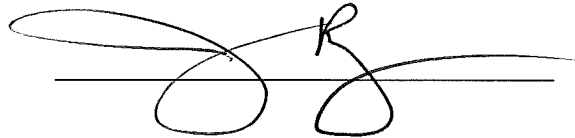
By 
Bassam N. Ibrahim
S. Lloyd Smith
Bryce J. Maynard
Attorneys for Applicant

Date: May 11, 2009
BUCHANAN INGERSOLL & ROONEY PC
1737 King Street
Alexandria, VA 22314-2727
Telephone: 703/836-6620
Facsimile: 703/836-2021

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR DEFAULT JUDGMENT AND PERMISSION TO FILE FOR SUMMARY JUDGMENT OUTSIDE THE DISCOVERY PERIOD** was served this 11th day of May, 2009, by first-class mail, postage prepaid, on:

David E. Sipiora
Shelley B. Mixon
TOWNSEND AND TOWNSEND AND CREW LLP
1400 Wewatta Street
Suite 600
Denver, CO 80202

A handwritten signature in black ink, appearing to be "DS", is written over a horizontal line.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PLASTI-FAB LTD.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91179480
	:	Opposition No. 91179482
KOBELCO CONSTRUCTION MACHINERY LTD.,	:	
	:	
Applicant.	:	

**KOBELCO CONSTRUCTION MACHINERY CO., LTD.’S SUPPLEMENTAL
RESPONSES TO OPPOSER’S FIRST SET OF INTERROGATORIES (NOS. 1-29)**

Applicant Kobelco Construction Machinery Ltd. (“Applicant”), in accordance with Rule 33 and other applicable rules of the Federal Rules of Civil Procedure and the applicable rules of the Trademark Trial and Appeal Board, hereby responds to Opposer Plasti-Fab Ltd.’s (Opposer’s) First Set of Interrogatories (Nos. 1-29) (“Interrogatories”).

GENERAL OBJECTIONS

Applicant objects to the production of confidential business information responsive to Opposer’s Interrogatories prior to the entry of a Protective Order. Applicant further objects to Opposer’s Interrogatories to the extent that they seek information pertaining to the ownership, registration, or use of Applicant’s mark outside of the United States or Applicant’s activities outside of the United States. Applicant objects to these interrogatories to the extent they concern goods and services, or marks, that are not identified on the applications that are the subject of these oppositions. Applicant further objects to Opposer’s definitions and instructions to the extent that they seek to impose upon Applicant any obligations beyond those required under the

applicable federal rules and the rules of the Trademark Trial and Appeal Board. Applicant also objects to these requests to the extent they seek information or documents subject to attorney-client privilege and/or the work product doctrine.

INTERROGATORY RESPONSES

INTERROGATORY NO. 1

Identify and describe all of the goods and/or services Applicant has sold, is currently selling, or intends to sell, under Applicant's Marks. The identified goods and services shall hereinafter be referred to as "Applicant's Goods and Services."

RESPONSE TO INTERROGATORY NO. 1

Applicant objects to this interrogatory to the extent it does not concern goods or services identified in the applications that are the subject of these oppositions. Applicant's goods are identified in U.S. Application Nos. 79/023,934 and 79/023,935.

INTERROGATORY NO. 2

Identify all Persons affiliated with Applicant who have any knowledge concerning the following issues:

- (a) the adoption of Applicant's Marks;
- (b) Applicant's knowledge of Opposer's Mark;
- (c) the sale of Applicant's Goods and Services;
- (d) the advertising of Applicant's Goods and Services;
- (e) the trade channels through which Applicant's Goods and Services travel;
- (f) any actual confusion between Applicant's Marks and Opposer's Mark;
- (g) the alleged likelihood of confusion between Applicant's Marks and Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 2

Applicant objects to this interrogatory as overly broad and unduly burdensome in its inquiry for all persons. Applicant further objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 3

State the date when Applicant first became aware of Opposer's Mark, and identify all facts relating thereto.

RESPONSE TO INTERROGATORY NO. 3

Applicant objects to production of this information prior to the entry of a Protective Order.

Subject to the foregoing objection, Applicant became aware of Opposer's Mark during prosecution of Applicant's Mark.

INTERROGATORY NO. 4

Describe all facts relating to the adoption of Applicant's Marks by Applicant.

RESPONSE TO INTERROGATORY NO. 4

Applicant objects to production of this information prior to the entry of a Protective Order.

Subject to the foregoing objection, Applicant states that the "GEO" in GEOSPEC represents Applicant's deep respect for the planet Earth and for the solid ground where excavators are in their element. The "SPEC" refers to the performance specifications needed to get the job done efficiently.

INTERROGATORY NO. 5

To the extent Applicant claims to have acquired any rights in Applicant's Marks through any predecessor-in-interest, describe the facts pertaining to said acquisition.

RESPONSE TO INTERROGATORY NO. 5

Applicant objects to production of this information prior to the entry of a Protective Order.

INTERROGATORY NO. 6

Describe with particularity any searches or surveys performed on Applicant's behalf in connection with the Applicant's Marks or Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 6

None.

INTERROGATORY NO. 7

Describe with particularity the date and circumstances of first use of Applicant's Marks in connection with Applicant's Goods and Services (a) in commerce of any sort and (b) in interstate commerce.

RESPONSE TO INTERROGATORY NO. 7

Applicant objects to this request as not reasonably calculated to lead to the discovery of admissible evidence. Applicant's priority date in the United States arises out of its U.S. Application Nos. 79/023,934 and 79/023,935 on the basis of Section 66(a).

INTERROGATORY NO. 8

Identify all federal and state trademark registration(s) or application(s) filed and/or obtained on behalf of Applicant for marks that include "GEOSPEC" and describe in detail the status of each application or registration.

RESPONSE TO INTERROGATORY NO. 8

Applicant objects to this interrogatory as irrelevant to the extent it does not concern applications that are the subject of these consolidated oppositions. Subject to these objections, Applicant identifies U.S. Application Nos. 79/023,934 and 79/023,935.

INTERROGATORY NO. 9

Describe any policy Applicant has regarding the use of Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 9

Applicant objects to this interrogatory as vague and ambiguous. Applicant further objects to production of this information prior to the entry of a Protective Order.

INTERROGATORY NO. 10

Omitted by Opposer.

INTERROGATORY NO. 11

Describe all instances of actual confusion between Applicant's Marks and Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 11

None.

INTERROGATORY NO. 12

Identify, on an annual basis for each year since Applicant's Marks were first used, the amount of revenue received by Applicant for each of Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 12

None.

INTERROGATORY NO. 13

Identify, on an annual basis for each year since Applicant's Marks were first used, the dollar amount of advertising and promotional expenditures for each of Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 13

None.

INTERROGATORY NO. 14

Identify all advertising methods used by Applicant in advertising Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 14

None.

INTERROGATORY NO. 15

Identify all web sites that are operated on behalf of Applicant that display or use Applicant's Marks in any way.

RESPONSE TO INTERROGATORY NO. 15

Applicant identifies its website at www.kobelco.com which may be accessed by U.S. consumers.

INTERROGATORY NO. 16

Identify the geographical areas, by city, county, region and state as applicable, in which Applicant's Goods and Services are currently being offered for sale under Applicant's Marks and, for each area, identify all such goods or services and the date on which they were first offered for sale.

RESPONSE TO INTERROGATORY NO. 16

Applicant objects to production of this information prior to the entry of a Protective Order.

Subject to the foregoing objection, Applicant states that five (5) used excavators have been shipped to the United States but have not been sold. Pursuant to Rule 33(d), Applicant will produce documents concerning this shipment. No other U.S. sales or shipments have been made.

INTERROGATORY NO. 17

Describe the channels of trade through which Applicant offers Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 17

Applicant objects to production of this information prior to the entry of a Protective Order. Subject to this objection, Applicant incorporates its response to Interrogatory No. 16.

INTERROGATORY NO. 18

Identify at least ten (10) representative customers to whom Applicant has sold Applicant's Goods and Services, including one or more representatives of each class of customers to whom Applicant markets or offers Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 18

Applicant objects to production of this information prior to the entry of a Protective Order.

Subject to the foregoing, Applicant has no current U.S. customers.

INTERROGATORY NO. 19

Describe in detail the facts relating to any periods of non-use of Applicant's Marks in connection with any of Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 19

None.

INTERROGATORY NO. 20

Identify and explain in detail any formal or informal objections that Applicant has ever received in connection with its use of Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 20

Applicant objects to this interrogatory as vague and ambiguous. No such objections have been received.

INTERROGATORY NO. 21

Describe all oral or written agreements entered into by Applicant referring or relating to Applicant's Marks, including without limitation, partnerships, distributorships, marketing agreements, assignments, licenses, security agreements, or agreements settling disputes.

RESPONSE TO INTERROGATORY NO. 21

Applicant objects to this interrogatory as overly broad and unduly burdensome in its inquiry for all persons. Applicant further objects to production of this information prior to the entry of a Protective Order.

INTERROGATORY NO. 22

Identify all experts with whom Applicant has consulted or who Applicant intends to call as witnesses in this action and state the subject matter on which each expert is expected to testify.

RESPONSE TO INTERROGATORY NO. 22

None.

INTERROGATORY NO. 23

Identify all fact or percipient witnesses who Applicant may call or will call in this action, and state the subject matter on which each individual is expected to testify.

RESPONSE TO INTERROGATORY NO. 23

Applicant objects to this interrogatory as premature prior to the testimony period.

INTERROGATORY NO. 24

Identify any instances in which Applicant's Goods and Services were offered for sale in the same trade channel as goods and services sold under Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 24

None.

INTERROGATORY NO. 25

Identify all other uses of which Applicant is aware of the term "GEOSPEC" by any third party in relation to goods and services used in the construction industry for the time period from May 6, 2004 to the present.

RESPONSE TO INTERROGATORY NO. 25

Applicant objects to this request as vague and ambiguous.

INTERROGATORY NO. 26

Identify each instance in which Applicant has asserted that a third party's use of any mark incorporating the element "GEOSPEC" is likely to result in confusion as to the source of the goods or services offered by that party and any of Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 26

None.

INTERROGATORY NO. 27

Identify each instance in which Applicant has asserted that a third party's use of any mark

incorporating the element “GEOSPEC” is likely to dilute or has diluted Applicant’s Marks.

RESPONSE TO INTERROGATORY NO. 27

None.

INTERROGATORY NO. 28

Identify all lawsuits or administrative proceedings, if any, past or present, regarding Opposer’s Marks.

RESPONSE TO INTERROGATORY NO. 28

None.

INTERROGATORY NO. 29

Identify all facts that Applicant believes supports Applicant’s contention in paragraph 1 of the “Affirmative Defenses” section of Applicant’s answers to Opposer’s Notice of Opposition that there is no likelihood of confusion between Opposer’s Mark and Applicant’s Marks.


RESPONSE TO INTERROGATORY NO. 29

Applicant objects to this interrogatory as premature prior to the testimony period.

Respectfully submitted,

KOBELCO CONSTRUCTION
MACHINERY LTD.

By



Bassam N. Ibrahim
S. Lloyd Smith
Bryce J. Maynard
Attorneys for Applicant

Date: May 11, 2009

BUCHANAN INGERSOLL & ROONEY PC

1737 King Street

Alexandria, VA 22314-2727

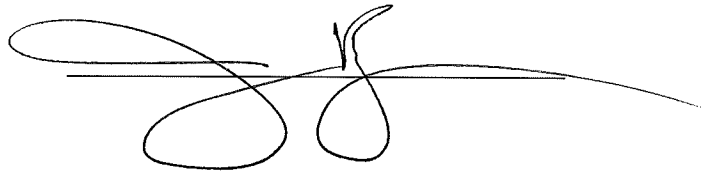
Telephone: 703/836-6620

Facsimile: 703/836-2021

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **KOBELCO CONSTRUCTION MACHINERY CO., LTD.'S SUPPLEMENTAL RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES (NOS. 1-29)** was served this 11th day of May, 2009, by first-class mail, postage prepaid, on:

David E. Sipiora
Shelley B. Mixon
TOWNSEND AND TOWNSEND AND CREW LLP
1400 Wewatta Street
Suite 600
Denver, CO 80202

A handwritten signature in black ink, appearing to read 'David E. Sipiora', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

S. Lloyd Smith
703 838 6514
lloyd.smith@bipc.com

P.O. Box 1404
Alexandria, VA 22313-1404

1737 King Street, Suite 500
Alexandria, VA 22314-2727
T 703 836 6620
F 703 836 2021
www.buchananingersoll.com

May 11, 2009

VIA U.S. MAIL

Shelley B. Mixon, Esq.
TOWNSEND AND TOWNSEND AND CREW LLP
1400 Wewatta Street
Suite 600
Denver, CO 80202

Re: *Plasti-Fab, Ltd. v. Kobelco Construction Machinery, Ltd.*
Opposition Nos. 91179480 and 91179482

Dear Shelley:

Enclosed please find Applicant's document production KOB001-KOB010. They are marked "Highly Confidential - Outside Counsel's Eyes Only" with the understanding that they will be treated as such until a protective order is entered. If you are unwilling to abide by this understanding, please return the documents to us.

Regards,


S. Lloyd Smith

SLS/lp
Enclosures

KOBELCO**INVOICE**KOBELCO CONSTRUCTION MACHINERY
INTERNATIONAL TRADING CO., LTD.Oval Court Ohsaki Mark West Bldg. 17-1, Higashigotanda 2-chome,
Shinagawa-ku, TOKYO, 141-8626 JAPAN Tel: (03) 5789-2124 Fax: (03) 5789-2135

MESSRS

CNH CAPITAL
ASSET REMARKETING
233 LAKE AVENUE
RACINE, WI 53403, U.S.A.

CONSIGNEE

VESSEL OR
ALLIANCE NEW YORKSAILING ON OR ABOUT
AUG 29, 2008PORT OF DISCHARGE
GALVESTON, U.S.A.PORT OF LOADING
KOBE, JAPAN
FINAL DESTINATION

MARKS AND NOS.

DESCRIPTION & QUANTITY

UNIT PRICE

AMOUNT

CNH CAPITAL
GALVESTON
MODEL: SK200-8
S/NO.: **
CASE NO. 1
MADE IN JAPANUSED KOBELCO HYDRAULIC EXCAVATOR
MODEL : SK200-8
S/NO. : YN11-47122
YN11-47366
YN11-47245
YN11-47177
YN11-47207**
YN11-47122
YN11-47366
YN11-47245
YN11-47177
YN11-47207

QUANTITY : 5 UNITS

TOTAL : 5 BARES - DETAILS ARE AS PER ATTACHED SHEET -

N / W : 97,000.0 KGS

G / W : 97,000.0 KGS

M'MENT: 386.000 M3

CIF GALVESTON

US\$450,000.00

INVOICE NO.
CK080864DATE
AUG 29, 2008

PURCHASE ORDER NO. OR CONTRACT NO.

L/C NO.

DATE

ISSUING BANK OR THROUGH BANK

OTHER PAYMENT TERMS
T.T. REMITTANCEKOBELCO CONSTRUCTION MACHINERY
INTERNATIONAL TRADING CO., LTD.T. YANAGAWA
EXPORT SHIPPING SECTION
MARKETING & SALES DEPARTMENTHIGHLY CONFIDENTIAL
OUTSIDE COUNSEL'S
EYES ONLY

KOB001

PARTS NO.	DESCRIPTION	QUANTITY	UNIT PRICE	AMOUNT (US\$)
	USED HYDRAULIC EXCAVATOR MODEL : SK200-8 S/NO. : YN11-47122 YN11-47366	2 UT	90,000.00	180,000.00
	USED HYDRAULIC EXCAVATOR MODEL : SK200-8 S/NO. : YN11-47245 YN11-47177	2 UT	90,000.00	180,000.00
	USED HYDRAULIC EXCAVATOR MODEL : SK200-8 S/NO. : YN11-47207	1 UT	90,000.00	90,000.00
TOTAL QUANTITY		5 UT		
TOTAL AMOUNT		CIF GALVESTON		US\$450,000.00

Shipper:

KOBELCO CONSTRUCTION MACHINERY
INTERNATIONAL TRADING CO., LTD.

PHONE: +81-3-5789-2124 SC. 2382

B/L No.

HOEGU831KBGL1019

Shipper's Ref.

F/Agent's Ref.

KOBELCO LOGISTICS, LTD.
Höegh Autoliners AS

Consignee (if "Order" state Notify Party)

MR. W. J. (BERNIE) BERNHARD
CNH CAPITAL
ASSET REMARKETING
233 LAKE AVENUE RACINE, WI 53403 U.S.A.

Oslo - Norway

Telephone: +47 21 03 90 00

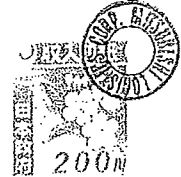
Telefax: +47 21 03 90 12

Enterprise No.: 933 099 628

Notify Party (without liability to Carrier)

SAME AS CONSIGNEE
ATTN.: MR. W. J. (BERNIE) BERNHARD
FAX: 262-636-0139
TEL: 262-636-6088

ORIGINAL



Local vessel

*From (local port of loading)

Ocean vessel

31 Port of loading KOBE, JAPAN

ALLIANCE NEW YORK

Port of discharge

*Final destination (if on-carriage)

Freight payable at TOKYO, JAPAN

GALVESTON, U.S.A.

Marks and Numbers

Number and kind of packages, freight units, description of goods, Gross weight, Measurement
31 NOVAL COURT OHSAKI MARK WEST BLDG. 17-1, HIGASHIGOTANDA
2-CHOME, SHINAGAWA-KU, TOKYO, 141-8626 JAPAN

CNH CAPITAL
GALVESTON
MODEL: SK200-8
S/NO.: **
CASE NO. 1
MADE IN JAPAN

USED KOBELCO HYDRAULIC EXCAVATOR

97,000 KGS

MODEL: SK200-8

S/NO.: YN11-47122

386.000 M3

YN11-47366

YN11-47245

YN11-47177

YN11-47207

**

YN11-47122

YN11-47366

YN11-47245

YN11-47177

YN11-47207

5 BARES

of which loaded:

on deck:

under deck:

SAY: FIVE (5) BARES ONLY. -

ABOVE PARTICULARS DECLARED BY SHIPPER

FREIGHT PREPAID
AS ARRANGED

GOODS SHIPPED onboard the Vessel in apparent good order and condition, weight, measure, marks & numbers, quality, contents and value unknown unless specified herein, for carriage to the port of destination or so near thereto as the vessel may safely get and lie always afloat, to be delivered in the like good order and condition at the aforesaid port to Consignees or their Assigns. Freight as per note on the margin plus other charges incurred in accordance with the provisions contained in this Bill of Lading - unless prepaid - to be paid by Consignees or their Assigns. In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its stipulations on both pages, whether written, printed, stamped or otherwise incorporated, as fully as if they were all signed by the Merchant.
One original Bill of Lading must be surrendered duly endorsed in exchange for the goods or delivery order.

FREIGHT PARTICULARS

AS ARRANGED

IN WITNESS where of the Master of the said Vessel has signed...
Bills of Lading all of this tenor and date, one of which being accomplished, the others (3) to stand void.

Limitation of Carriers Liability.

Declared value:

Declared value charges:
(See Clause 10)

HIGHLY CONFIDENTIAL
OUTSIDE COUNSEL'S
EYES ONLY

Place and date of issue

KOBE, JAPAN

AUG. 29. 2008

Signed by

MITSUBISHI LOGISTICS CORP.

As agent for the Carrier

Höegh Autoliners AS

FREIGHT PAYABLE CARGO LOST OR NOT LOST

*Applicable only when document used as Through Bill of Lading

KOB003

KOBELCO

MASTER PACKING LIST

KOBELCO CONSTRUCTION MACHINERY
INTERNATIONAL TRADING CO., LTD.

Oval Court Ohsaki Mark West Bldg. 17-1, Higashigotanda 2-chome,
Shinagawa-ku, TOKYO, 141-8626 JAPAN Tel: (03)5789-2124 Fax: (03)5789-2135

MESSRS

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ASSET REMARKETING
233 LAKE AVENUE
RACINE, WI 53403, U.S.A.

CONSIGNEE

VESSEL OR

ALLIANCE NEW YORK

SAILING ON OR ABOUT

AUG 29, 2008

PORT OF DISCHARGE

GALVESTON, U.S.A.

PORT OF LOADING

KOBE, JAPAN

FINAL DESTINATION

INVOICE NO.

CK080864

DATE

AUG 29, 2008

PURCHASE ORDER NO. OR CONTRACT NO.

L/C NO.

DATE

ISSUING BANK OR THROUGH BANK

OTHER PAYMENT TERMS

T.T. REMITTANCE

MARKS AND NOS.

DESCRIPTION & QUANTITY

NET WEIGHT

GROSS WEIGHT

M'MENT

CNH CAPITAL

GALVESTON

MODEL: SK200-8

S/NO.: **

CASE NO. 1

MADE IN JAPAN

USED KOBELCO HYDRAULIC EXCAVATOR

MODEL : SK200-8

S/NO. : YN11-47122

YN11-47366

YN11-47245

YN11-47177

YN11-47207

**

YN11-47122

YN11-47366

YN11-47245

YN11-47177

YN11-47207

QUANTITY :

5 UNITS

5 BARES

97,000.0 KGS

97,000.0 KGS

386.000 M3

- DETAILS ARE AS PER ATTACHED SHEET -

KOBELCO CONSTRUCTION MACHINERY
INTERNATIONAL TRADING CO.,LTD.

T. YANAGAWA

EXPORT SHIPPING SECTION
MARKETING & SALES DEPARTMENT

HIGHLY CONFIDENTIAL
OUTSIDE COUNSEL'S
EYES ONLY

KOB004

PACKING LIST

MARK & NO.

CNH CAPITAL
GALVESTON
MODEL : SK200-8
S/NO. : YN11-47122
CASE NO. 1
MADE IN JAPAN

NO.

DATE

O/NO.

FROM

TO

INVOICE NO.

NAME OF VESSEL

PACKAGE NO.	PACKAGE STYLE	DESCRIPTION OF ARTICLE	QUANTITY	NET WEIGHT KGS	GROSS WEIGHT KGS	MEASUREMENT M3
NO. 1	BARE	<p>USED KOBELCO HYDRAULIC EXCAVATOR MODEL : SK200-8</p> <p>MAIN MACHINE 9,410 X 2,800 X 2,930</p> <p>SERIAL NO. YN11-47122</p> <p>Eng.MFG. : HINO</p> <p>Eng.Model : J05E-TA</p> <p>Eng.Serial : J05ETA13684</p> <p>Rating : Gross horsepower/kilowatt : 114kW at 2000rpm</p> <p>Build Date : Mar-2007</p>	1 UNIT	19,400	19,400	77.200

HIGHLY CONFIDENTIAL
OUTSIDE COUNSEL'S
EYES ONLY

- CONCLUDED -

KOB005

PACKING LIST

NO.

MARK & NO.

DATE

O/NO.

FROM

TO

INVOICE NO.

NAME OF VESSEL

CNH CAPITAL
GALVESTON
MODEL : SK200-8
S/NO. : YN11-47366
CASE NO. 1
MADE IN JAPAN

PACKAGE NO.	PACKAGE STYLE	DESCRIPTION OF ARTICLE	QUANTITY	NET WEIGHT KGS	GROSS WEIGHT KGS	MEASUREMENT M3
NO. 1	BARE	<p>USED KOBELCO HYDRAULIC EXCAVATOR MODEL : SK200-8</p> <p>MAIN MACHINE 9,410 X 2,800 X 2,930</p> <p>SERIAL NO. YN11-47366</p> <p>Eng.MFG. : HINO</p> <p>Eng.Model : J05E-TA</p> <p>Eng.Serial : J05ETA14068</p> <p>Rating : Gross horsepower/kilowatt : 114kW at 2000rpm</p> <p>Build Date : Apr-2007</p>	1 UNIT	19,400	19,400	77.200

- CONCLUDED -

HIGHLY CONFIDENTIAL
OUTSIDE COUNSEL'S
EYES ONLY

KOB006

PACKING LIST

NO.

MARK & NO.

DATE

O/NO.

FROM

TO

INVOICE NO.

NAME OF VESSEL

CNH CAPITAL
GALVESTON
MODEL : SK200-8
S/NO. : YN11-47245
CASE NO. 1
MADE IN JAPAN

PACKAGE NO.	PACKAGE STYLE	DESCRIPTION OF ARTICLE	QUANTITY	NET WEIGHT KGS	GROSS WEIGHT KGS	MEASUREMENT M3
NO. 1	BARE	<p>USED KOBELCO HYDRAULIC EXCAVATOR MODEL : SK200-8</p> <p>MAIN MACHINE 9,410 X 2,800 X 2,930</p> <p>SERIAL NO. YN11-47245</p> <p>Eng.MFG. : HINO</p> <p>Eng.Model : J05E-TA</p> <p>Eng.Serial : J05ETA13853</p> <p>Rating : Gross horsepower/kilowatt : 114kW at 2000rpm</p> <p>Build Date : Mar-2007</p>	1 UNIT	19,400	19,400	77.200

- CONCLUDED -

HIGHLY CONFIDENTIAL
OUTSIDE COUNSEL'S
EYES ONLY

KOB007

PACKING LIST

NO.

MARK & NO.

DATE

O/NO.

FROM

TO

INVOICE NO.

NAME OF VESSEL

CNH CAPITAL
GALVESTON
MODEL : SK200-8
S/NO. : YN11-47177
CASE NO. 1
MADE IN JAPAN

PACKAGE NO.	PACKAGE STYLE	DESCRIPTION OF ARTICLE	QUANTITY	NET WEIGHT KGS	GROSS WEIGHT KGS	MEASUREMENT M3
NO. 1	BARE	<p>USED KOBELCO HYDRAULIC EXCAVATOR MODEL : SK200-8</p> <p>MAIN MACHINE 9,410 X 2,800 X 2,930</p> <p>SERIAL NO. YN11-47177</p> <p>Eng.MFG. : HINO</p> <p>Eng.Model : J05E-TA</p> <p>Eng.Serial : J05ETA13774</p> <p>Rating : Gross horsepower/kilowatt : 114kW at 2000rpm</p> <p>Build Date : Mar-2007</p>	1 UNIT	19,400	19,400	77.200

HIGHLY CONFIDENTIAL
OUTSIDE COUNSEL'S
EYES ONLY

KOB008

PACKING LIST

NO.

MARK & NO.

DATE

O/NO.

FROM

TO

INVOICE NO.

NAME OF VESSEL

CNH CAPITAL
GALVESTON
MODEL : SK200-8
S/NO. : YN11-47207
CASE NO. 1
MADE IN JAPAN

PACKAGE NO.	PACKAGE STYLE	DESCRIPTION OF ARTICLE	QUANTITY	NET WEIGHT KGS	GROSS WEIGHT KGS	MEASUREMENT M3
NO. 1	BARE	<p>USED KOBELCO HYDRAULIC EXCAVATOR MODEL : SK200-8</p> <p>MAIN MACHINE 9,410 X 2,800 X 2,930</p> <p>SERIAL NO. YN11-47207</p> <p>Eng.MFG. : HINO</p> <p>Eng.Model : J05E-TA</p> <p>Eng.Serial : J05ETA13796</p> <p>Rating : Gross horsepower/kilowat : 114kW at 2000rpm</p> <p>Build Date : Mar-2007</p>	1 UNIT	19,400	19,400	77.200

- CONCLUDED -

HIGHLY CONFIDENTIAL
OUTSIDE COUNSEL'S
EYES ONLY

KOB009



Nissay Dowa General Insurance Co., Ltd.

HEAD OFFICE 8-1, AKASHI-CHO, CHUO-KU, TOKYO, JAPAN

ORIGINAL

印紙税申告納
付につき京橋
税務署承認済

Assured(s), etc.

Messrs. KOBELCO CONSTRUCTION MACHINERY
INTERNATIONAL TRADING CO.,
LTD.

Code: 39891 274818

Policy No. 0108-2239033

Claim, if any, payable at / in

by GALVESTON, U. S. A.

VERICLAIM, INC.
7005, FLOWER STREET, SUITE 2310
LOS ANGELES, CALIFORNIA 90017, U. S. A.
TEL (1) 213-943-5000/
800-999-0411

Invoice No. CK080864

Amount insured US\$495,000.00

Conditions :
(Risks Covered) ALL RISKS
CO-INSURANCE CLAUSE.

Local Vessel or Conveyance	From (interior port or place of loading) INTERIOR POINT(S) IN JAPAN
Ship or Vessel called the ALLIANCE NEW YORK	at and from KOBE, JAPAN
arrived at/transhipped at GALVESTON, U. S. A.	Sailing on or about AUG. 29. 2008
thence to	

Goods and Merchandises

USED KOBELCO HYDRAULIC EXCAVATOR
MODEL : SK200-8
S/NO. : YN11-47122
YN11-47366
YN11-47245
YN11-47177
YN11-47207

QUANTITY : 5 UNITS

Nissay Dowa General Insurance Co., Ltd. shall act in respect of this co-insurance on behalf of the following co-insurers who, each for itself and not one for the others, are severally and independently liable for their respective subscription hereto as specified below.

CO-INS.	SHARE
10 NISSAY DOWA	45.00
15 NIPPONKOA INS	19.20
09 TOKIO M. NICHIDO	18.30
14 NISSHIN F.	17.50

(A) Institute Replacement Clause
In the event of loss or damage to any part or parts of an insured machine caused by a peril covered by the policy the sum recoverable shall not exceed the cost of replacement or repair of such part or parts plus charges for forwarding and refitting, if incurred, but excluding duty unless the full duty is included in the amount insured, in which case loss if any, sustained by payment of additional duty shall also be recoverable.

Provided always that in no case shall the liability of this Company exceed the insured value of the complete machine.

(B) Special Replacement Clause (Air Freight)
It is specially understood and agreed that charges for forwarding part or parts for replacement or repair provided for in the Institute Replacement Clause attached hereto shall include those for forwarding by Air.

(C) Special Replacement Clause (Duty)
Notwithstanding the provision in the Institute Replacement Clause contained herein, it is specially understood and agreed that this Company shall also be liable to pay for loss, if any, sustained by payment of duty on part or parts for replacement or repair in case the full duty is not included in the amount insured because of the insured machine being free of duty.

In case of the interest hereby insured being packed into container(s) (except open top &/or flat rack container and the like), shipped under deck &/or on deck.

Including risks of War, Strikes, Riots and Civil Commotions.

Abbreviations in the above "Risks Covered" shall be fully read as follows:
All Risks... All Risks of loss or damage irrespective of percentage.
W.A. ... With Average, irrespective of percentage.
F.P.A. ... Free from Particular Average.
T.P.N.D. ... Including the risks of Theft, Pilferage & Non-Delivery.
Subject to the following clauses printed on the back of this policy:
Institute Cargo Clauses, Institute War Clauses (Cargo)
Institute War Clauses For the Insurance of sendings by Post
Institute Strikes Riots & Civil Commotions Clauses
Institute Replacement Clause (Applying to Machinery)
Institute Theft, Pilferage & Non-Delivery (Insured Value) Clause
(Applicable when specifically stated to cover or when All Risks covered)

Label Clause (Applying to Labelled Goods)
Parcel Post Clause (Applying to Parcel Post or other Mail only)
Duty Clause (Applicable when Duty is separately insured under the Policy)
Cargo ISM Endorsement
Termination of Transit Clause (Terrorism)
Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause

Marks and Numbers as per Invoice No. specified above

place and Date signed in

TOKYO AUG. 26. 2008

Valued at the same as Amount insured.

No. of Policies issued

TWO

CD. 40 0 0829 1 681 699 5215 Y88026 2

1. Warranted free of capture, seizure, arrest, restraint or detention, and the consequences thereof or of any attempt thereof; also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

2. Warranted free of loss or damage

(a) caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions;

(b) resulting from strikes, lock-outs, labour disturbances, riots or civil commotions.

Grounding or stranding in the Suez, Panama or other canals, harbours or tidal rivers not to be deemed a stranding under the terms of the policy, but to pay any damage or loss which may be proved to have directly resulted therefrom.

This Insurance does not cover any loss or damage to the property which at the time of the happening of such loss or damage is insured by or would but for the existence of this Policy be insured by any fire or other insurance policy or policies except in respect of any excess beyond the amount which would have been payable under the fire or other insurance policy or policies had this insurance not been effected.

In the event of loss or damage which may involve a claim under this insurance, no claim shall be paid unless immediate notice of such loss or damage has been given to and a Survey Report obtained from this Company's Office or Agents specified in this Policy.

In case of loss or damage, please refer to the "IMPORTANT" clause printed on the back hereof and act accordingly.

The descriptions to be inserted in the following clauses are shown as above.

As well in his or their own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make Insurance, and hereby cause himself or themselves and every of them, to be insured, lost or not lost, at and from the port of departure upon Goods and Merchandises, or Treasure, of and in the good Ship or Vessel called the

or whosoever else shall go for Master in the said Vessel, or by whatsoever other Name or Names the said Vessel, or the Master thereof, is or shall be named or called: BEGINNING the Adventure upon the said Goods and Merchandises from the loading thereof on board the said Ship, and so to continue and endure, until the said Goods and Merchandises shall have arrived at

And until the same be there discharged and safely landed. And it shall be lawful for the said Vessel, in this Voyage to proceed and sail to and touch and stay at any Ports or Places whatsoever, (within the limits of the above Voyage) for necessary Provisions, Assistance or Repairs, without prejudice to this Insurance; the said Goods and Merchandises laden thereon for so much as concerns the Assured, are and shall be

Touching the Adventures and Perils which the said Nissay Dowa General Insurance Co., Ltd., themselves are content to bear, and do take upon them in this Voyage: they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality soever, Barricade of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises, or any part thereof; and in case of any Loss or Misfortune, it shall be lawful for the Assured, his or their Factors, Servants, or Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises, or any part thereof, without prejudice to this Insurance; to the Charges whereof the said Company will contribute. It is expressly declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. AND it is agreed that this Writing or Policy of Insurance shall be of as much Force and Virtue as the surest Writing or Policy of Insurance made in LONDON. And so the said Nissay Dowa General Insurance Co., Ltd., are contented, and do hereby promise and bind themselves to the Assured, his or their Executors, Administrators, or Assigns, for the true Performance of the Premises; confessing themselves paid the Consideration due unto them for this Insurance, at and after the rate of

*Corn, Fish, Salt, Fruit, Flour and Seed are warranted free from Average, unless General; or the Ship be stranded, sunk or burnt; Sugars, Tobacco, Hemp, Flax, Hides and Skins are warranted free from Average under Five per cent, and all other Goods are warranted free from Average under Three per cent, unless General; or the Ship be stranded, sunk or burnt.

This insurance is understood and agreed to be subject to English law and usage as to liability for and settlement of any and all claims.

In witness whereof, I the Undersigned of Nissay Dowa General Insurance Co., Ltd., on behalf of the said Company, have subscribed my name in to Policies of the same tenor and date, one of which being accomplished, the others to be void, as of the date specified as above.

For Nissay Dowa General Insurance Co., Ltd.

AUTHORIZED SIGNATORY

KOB010

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OUTSIDE COUNSEL'S
EYES ONLY